

Gary Spraker

Honorable Gary Spraker
United States Bankruptcy Judge



Entered on Docket
May 05, 2023

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Christopher P. Burke

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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IN RE

METAL RECOVERY SOLUTIONS,
INC., aka MRS, INC,

Debtor(s).

BK-N- 20-50660-GS

CHAPTER 7

ORDER APPROVING TRUSTEE'S MOTION
TO APPROVE SALE OF CLAIMS AND
OTHER BANKRUPTCY ESTATE ASSETS

Hearing Dates: 4/5/23
Time: 9:30 a.m.
Mtn No. 255-3

THIS MATTER came before the Court on the Chapter 7 Trustee's Motion to Approve Sale of Claims and Other Bankruptcy Estate Assets (ECF 255-3) ("Trustee's Motion") on April 5, 2023. Response and reply papers are filed with the Court. Michael Lehnern, Esq. appeared on behalf of the Chapter 7 Trustee, who was also present. Amy Tirre, Esq. appeared on behalf

1 of Element Global, Inc.; Louis Bubala, Esq. and Ronald Oines, Esq. appeared upon behalf of
2 Geo-Logic Associates, Inc., joined by its president, Gary Lass; Seth Adams, Esq. appeared on
3 behalf of Differential Engineering, Inc., joined by its president, Dr. Thom Seal; Elizabeth
4 Fletcher, Esq. appeared on behalf of Dr. Thom and Jetta Seal, joined by Dr. Seal; and Ellen
5 Ostrow, Esq. appeared on behalf of JEX Technologies Corp., joined by its chief executive
6 officer, David McMullin, and its general counsel, George Young. Following oral argument on
7 April 5, and after specific findings and conclusions made on the record, an auction was held for
8 the sale of the assets, and Element Global, Inc. was selected as the winning bidder. The matter
9 was continued for evidentiary hearings regarding 11 U.S.C. §363(m) to 11 a.m. on April 6,
10 2023, and 11 a.m. on April 17, 2023 (the latter, remotely), with appearances noted on the
11 record. In preparation for the hearing on April 17, 2023, the following declarations were filed:
12 Steven Gagnon of Element Global, Inc. (ECF 311); Dr. Thom Seal (ECF 312); David
13 McMullin (ECF 313) of JEX Technologies Corp.; and an amended declaration of Dr. Seal (ECF
14 315). These declarations were admitted into evidence without objection at the hearing on April
15 17, 2023 and each of the declarants appeared and were cross examined by Mr. Lehnert and Mr.
16 Oines during that hearing.

17 The Court reviewed the matters before it and made oral findings of facts and conclusions
18 of law on the record at the April 5 and April 17 hearings pursuant to Fed. R. Bank. P. 7052.
19 Those findings of fact and conclusions of law are hereby incorporated into this Order by
20 reference. Good cause appearing therefore, the Court finds and orders as follows:

21 IT IS HEREBY ORDERED that the Trustee's Motion to Approve Sale of Claims and
22 Other Bankruptcy Estate Assets is approved as modified on the record and by this Order.

23 IT IS FURTHER ORDERED that Element Global, Inc., was the highest bidder at the
24 auction conducted by this Court in person on April 5, 2023, by making a cash bid in the amount
25 of \$2,500,000 for the "Purchased Assets" as defined by and on the terms and conditions of the
26 Assets Purchase Agreement Term Sheet attached to the Trustee's Motion as "Exhibit 2" ("Term
27 Sheet"). (ECF 255-3, Exhibit "2").
28

1 IT IS FURTHER ORDERED that Element Global, Inc., shall pay the purchase price of
2 \$2,500,000 in cash within five (5) business days of this Order becoming final and non-
3 appealable.

4 IT IS FURTHER ORDERED that JEX Technologies Corp., and Dr. Seal are the backup
5 bidders in the amount of \$2,450,000 (\$2,300,000 by Jex Technologies Corp., \$150,000 by
6 Dr. Seal) on the same terms as Element Global, Inc., in the event that Element Global, Inc.,
7 does not complete the purchase under the terms of this Order. In that event, then Jex
8 Technologies Corp., and Dr. Seal shall pay their backup bid within five (5) business days of the
9 Chapter 7 Trustee's email to all parties to this Order providing notice of Element Global, Inc.'s
10 failure to perform.

11 IT IS FURTHER ORDERED that all Purchased Assets shall be purchased free and clear
12 of all claims, including, without limitation, successor liability claims, liens, and encumbrances
13 pursuant to §§363(b) and (f) of the Bankruptcy Code.

14 IT IS FURTHER ORDERED that the Lease with Purchase Option Agreement between
15 JEX Technologies Corp. and Metal Recovery Solutions, Inc. dated July 31, 2015, to the extent
16 an executory contract under 11 U.S.C. §365, is hereby assumed and assigned to Element
17 Global, Inc. upon closing.

18 IT IS FURTHER ORDERED that by making the sale free and clear of claims, liens, and
19 encumbrances, this Court makes no findings regarding JEX Technologies Corp., Dr. Seal and
20 Differential Engineering, Inc.'s claims and defenses with respect to the "Claims for Relief" as
21 defined in the Term Sheet that are being sold.

22 IT IS FURTHER ORDERED that all Agreements (as defined in the Term Sheet) are
23 hereby assigned to the Purchaser.

24 IT IS FURTHER ORDERED that the buyer will not assume any liabilities of the Sellers
25 and the Estate as those terms are defined in the Term Sheet.
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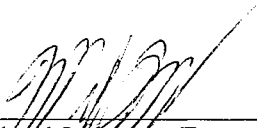
1 IT IS FURTHER ORDERED that the Sellers will execute any and all necessary
2 documents to transfer the Purchased Assets, i.e., the "Transfer Documents," as defined in the
3 Term Sheet.

4 IT IS FURTHER ORDERED that, based on the evidence presented and the findings
5 made on the record, Element Global, Inc., JEX Technologies Corp. and Dr. Seal are entitled to
6 and granted the protections of §363(m) as good faith purchasers.

7 IT IS FURTHER ORDERED that the 14-day time period in Fed. R. Bankr. P. 6004(h)
8 is waived.

9 IT IS FURTHER ORDERED that the Purchased Assets remain property of the estate
10 until a buyer has paid the purchase price in full.

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12
13 Dated: 5-3-23

14 
15 Michael Lenners, Esq.
16 Attorney for Chapter 7 Trustee

~~Approved~~/Disapproved

Dated: 5-3-23

17 /s/ Amy Tirre
18 Amy Tirre, Esq.
19 Attorney for Element Global, Inc.

20 ~~Approved~~/Disapproved

Dated: 5-3-23

21 /s/ Ellen Ostrow
22 Ellen Ostrow, Esq.
23 Attorney for Jex Technologies, Inc.

~~Approved~~/Disapproved

Dated: 5-3-23

24 /s/ Louis Bubala
25 Ronald Oines, Esq.
26 Louis Bubala, Esq.
27 Attorney for Geo-Logic Associates, Inc.

28 ~~Approved~~/Disapproved

Dated: 5-3-23

/s/ Seth Adams
Seth Adams, Esq.
Attorney for Differential Engineering, Inc.

~~Approved~~/Disapproved

Dated: 5-3-23

/s/ Elizabeth Fletcher
Elizabeth Fletcher, Esq.
Attorney for Dr. Thom and Jette Seal

CERTIFICATION PER LR 9021

In accordance with LR 9021, counsel submitting this document certifies as follows:

___ The court has waived the requirement set forth in LR 9021(b)(1).

___ No party appeared at the hearing or filed an objection to the motion.

XX I have delivered a copy of this proposed order to all attorneys who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below: [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

___ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

/s/ Michael Lehnerts, Esq.
Michael Lehnerts, Esq.
attorney for Movant